

[Advisory Opinion 1998-9]

## MONTGOMERY COUNTY ETHICS COMMISSION

### ADVISORY OPINION

July 21, 1998

The Ethics Commission received and considered a letter from a former employee requesting a waiver, if necessary, to perform work on a County contract as an employee of the contractor.

#### PERTINENT FACTS

1. The requestor resigned from Montgomery County employment in February 1998.
2. The requestor was employed by Montgomery County for twelve (12) years, the majority of which the requestor served as Chief of Procurement Operations.
3. The last two years of employment with the county the requestor was assigned to the 800 Mhz Public Safety Radio Project and did not work as Chief of Procurement Operations.
4. During the period of employment with Montgomery County as Chief of Procurement Operations, the requestor was responsible for the administration of County contracts which included a contract with KPMG in 1989 for the installation of the County's automated procurement system and subsequent upgrade of both the procurement and financial systems by KPMG in 1993. The contract with KPMG is still valid and KPMG provides annual maintenance support.
5. KPMG has been advised that the County's Department of Finance intends for KPMG to upgrade the County's financial system if funding is approved and the County and KPMG successfully negotiate an amendment to the existing contract.
6. The requestor believes it is in the County's best interest to permit her to work on the contract because she has an intimate knowledge of both the County's procurement office operations and KPMG's purchasing software.

#### APPLICABLE LAW

Section 19A-13 of the Montgomery County Code restricts the employment of a former county employee under two circumstances. First, there is a general one-year ban with respect to employment of a former county employee by a county contractor under certain circumstances (the "1

Year Total Ban"). For one year after the effective date of termination from County employment a former public employee may not enter into any employment, understanding or arrangement (express, implied, or tacit) with any person or business that contracts with a County agency if the public employee significantly participated in regulating the person or business or had official responsibility concerning a contract with the person or business (except a non-discretionary contract with a regulated public utility). §19A-13(b).<sup>1</sup>

Second, there is a ten-year ban on employment with regard to specific matters (the "10 Year Partial Ban"). A former county employee is prohibited from accepting employment or assisting any party, other than a County agency, in a case, contract, or other specific matter for 10 years after the last date the employee significantly participated in the matter as a public employee. §19A-13(a).

The Commission is authorized to waive either of these prohibitions upon a written request and under certain circumstances. In particular, the Commission may grant a waiver of the prohibitions of subsection 19A-13 if it finds: (1) failing to grant the waiver may reduce the ability of the County to hire or retain highly qualified public employees; or (2) the proposed employment is not likely to create an actual conflict of interest. §19A-8(c). If the Commission determines that a waiver should be granted, the Commission may impose conditions appropriate to fulfill the purposes of the Ethics Law and must disclose to the public any waiver that it grants.

## CONCLUSION

Although the requestor had official responsibility on behalf of Montgomery County for the KPMG contract, she is not restricted by the 1 Year Total Ban because more than one year has elapsed since she participated in the contract. However, the 10 Year Partial Ban continues to apply to her with regard to the KPMG contract with Montgomery County, and will continue for the remainder of ten years from the date she no longer participated in the contract. In particular, although she may be employed by KPMG, she may not work on the contract on which she significantly participated as a county employee.

The Commission cautions that, in its opinion, the ten year ban with respect to the KPMG contract applies to any and all forms of assistance, including, but not limited to, assisting in the preparation of any claim under or extension of the current contract and any bid or proposal on a new contract with Montgomery County. The requestor may not, during the 10 year period, perform any service, directly or indirectly, for KPMG in connection with that contract or any successor contract. She also may not, in the opinion of the Commission, disclose to KPMG any confidential information that she acquired as a county employee concerning a county agency or otherwise use confidential

---

<sup>1</sup> For the purposes of this law, significant participation means direct administrative or operating authority to approve, disapprove, or otherwise decide government action with respect to a specific matter, whether the authority is intermediate or final, exercisable alone or with others, and exercised personally or through subordinates. It ordinarily does not include program or legislative oversight, or budget preparation, review, or adoption. §19A-13(c).

information acquired as a county employee for her own personal gain or that of another.  
Montgomery County Code, §19A-15.